

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
MINUTES  
December 7, 2009**

**1. OPENING OF THE MEETING**

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL:**

**PRESENT:** Raymond Arroyo  
Guy Hartman  
Dan Koch  
Christopher Owens  
Eric Oakes  
Joseph Frasco, Vice-Chairman  
William Martin, Chairman  
Robert Bicocchi (Alt #1)  
Michael Bieri (Alt. #2)

**ALSO PRESENT:** David Rutherford, Esq., Board Attorney  
Tom Lemanowicz, Maser Consulting, PA  
For Louis Raimondi (also present)  
Steve Lydon, Burgis Associates

**ABSENT:** None

**4. MINUTES** - The Minutes of the 10/5/09 were approved on motions made, seconded and carried. The Minutes of 11/2/09 were carried to the next meeting.

**5. CORRESPONDENCE:** On dais

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**6. VOUCHERS:** A motion to approve vouchers totaling \$7,792.50 was made by Mr. Arroyo, seconded by Mr. Oakes, and carried unanimously on roll call vote.

**7. RESOLUTIONS:**

**1. Paragon Federal Credit Union, Washington Avenue -** Mr. Zenn appeared. They were not expected to go back to the Historic Preservation Commission (HPC). A brief discussion followed. Mr. Martin stated the Board would continue with the Resolution, and the applicant should work out any issues directly with the HPC regarding a conservation easement protection on the property. If he is not satisfied, he can return to the Board. Mr. Rutherford advised the HPC indicated they wanted the Board to include this in the Resolution. If the Board authorized, he could consult with them to attempt to resolve the matter.

Mr. Rutherford gave an overview of the Resolution of Approval. A motion for approval was made by Mr. Arroyo, with second by Mr. Koch. There were no further questions, comments or discussions. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Oakes, Mr. Owens, Mr. Bieri, and Mr. Martin voted yes. Mr. Hartman and Mr. Bicocchi were not eligible to vote.

**2. J. LaDuca, 80 Ash Street - Section 68 -** Mr. Rutherford gave an overview of the Resolution of Approval. A motion for approval was made by Mr. Arroyo, with second by Mr. Koch. There were no further questions, comments or discussions. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr. Owens, Mr. Bicocchi, and Mr. Martin voted yes. Mr. Oakes was not eligible to vote.

**3. Bohen, 567 Lafayette Avenue - Variance -** Mr. Rutherford gave an overview of the Resolution of Approval, calling attention to the conditions, i.e., height and location of fence. A motion for approval was made by Mr. Arroyo, with second by Mr. Koch. There were no further questions, comments or discussions. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr. Oakes, Mr. Owens, and Mr. Martin voted yes.

**8. PENDING NEW BUSINESS:**

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**1. Fahie, 60 Westwood Boulevard - Application for Certificate of Non-conforming Use - Scheduled for 1/11/10;**

**2. Seitz, 40 Kennedy Terrace - Variance Application - Scheduled for 1/11/10;**

**3. Porqui Pas, 31 Westwood Avenue - Appeal/Variance Application - Scheduled for 1/11/10;**

**9. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS

The Board Professionals were sworn in.

**1. Kevin Seger, 56 Hillside Avenue - Variance -** Nancy Saccente, Esq. submitted revised plans revised to 11/12/09. Signatures were added for the building Department. The pool is being relocated a full 15' from the side property line, eliminating the variance. That was the main concern which is now addressed. The spa has been moved a full 15' from the side property line as the Board requested but still in the side yard. They have met all the Board's requirements as far as compromising and respectfully requested that the Board approve the application.

Mr. Lydon reviewed the new plan and stated the variance would be for the spa in the side yard. The area to the North of the driveway is to be regarded and restored. There should be no vehicles parked, and some landscaping should be added to deter parking. Ms. Saccente stated grass and shrubbery would be planted. The deck would be expanded. There was also a variance for a 2<sup>nd</sup> accessory building and retaining wall height. There were no further questions from the Board and no interested parties.

A motion for approval was made by Mr. Frasco and seconded by Mr. Koch, with the conditions as noted. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr. Bicocchi, Mr. Bieri, and Mr. Martin voted yes. Mr. Oakes and Mr. Bicocchi were not eligible to vote.

**2. J. LaDuca, 80 Ash Street - Variance -** Mr. Rutherford checked the file for the Notice. Applicant stated it was published the Friday after Thanksgiving, but they did not have

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the Affidavit of Publication with them. Applicant believed it was filed along with the Section 68 notice. Mr. Martin and Mr. Rutherford advised these documents must be given to the Board. Mr. Martin asked the architect to discuss the changes to the plan. Mr. Fethes continued under oath and stated the areas of change were masonry tiers and deck in the rear. The side yard is an existing condition. The latest revision was 11/20/09. The survey was dated 11/9/09. Mr. Lemanowicz advised he had not received a copy of the latest plan or survey, but was given copies at the meeting.

Mr. Lydon gave his review of the plan and the variances. There is an expansion of a non-conforming use; conversion of attic space to dwelling, expansion of deck and adding of second floor deck. Mr. Martin noted they do not increase the living space. Mr. Arroyo asked if the architect was a professional planner, but he stated he was not. Mr. Fethes said from an architectural planning point of view the first and second floors do not vary.

There were no further questions by the Board and none from the public. On discussion, Mr. Oakes said it was a good use of space and stays with the character of the house. Mr. Martin commented the expansions did not add to the size of the house.

A motion for approval was made by Mr. Arroyo and seconded by Mr. Bicocchi. Mr. Frasco asked about the well. For conditions, the Affidavits of Publication and Service must be provided, the date added to survey, side yard and all as stated. There were no further questions, comments or discussions. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr. Owens, Mr. Bicocchi, and Mr. Martin voted yes. Mr. Oakes was not eligible to vote.

**3. P. Petrina, 118 Third Avenue - Variance** - William Petrina, Esq. represented the applicant and reviewed from the prior hearing. Mr. Rutherford found the notice ad publication documents to be in order. Frank D. Mileto AIA, applicant's architect, was sworn in qualified and accepted and prepared the architectural plans dated 11/9/09 for a D2 application with bulk variances. Mr. Mileto testified Mr. Petrino wanted to provide an outdoor area accessible to his handicapped mother. They removed a substantial amount of concrete and the garage, a great amount of impervious material. 484 sq. ft. of concrete was

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removed and 115' of sidewalk. The variances were for impervious coverage, floor area ratio and building coverage. Mr. Mileto referred to the Maser Consulting report dated 12/7/09. This sunroom addition constitutes an expansion of a D2 variance. They are not asking for a new expansion of a non-conforming use for which a Section 68 Certificate was issued, but for a continuance. It is a facility to allow his mom to enjoy the yard from inside. It would not have any negative impacts and can be granted without any detriments. The building coverage is de minimus. Parking requirements are met. The benefits of this addition and enhancements outweigh any detriments. It does not give or increase any density in this building as it exists as a two-family. Photos were displayed. The driveway had gravel, Mr. Lemanowicz noted, which could be easily compacted to become an impervious surface. Mr. Martin and other Board Member felt it could have a detrimental effect and should be grass. Mr. Lemanowicz felt grass would be better. Mr. Martin commented there is a great amount of pavement on the property. Mr. Lydon commented there is 56% impervious coverage and 31% building coverage and asked what steps they have taken to reduce the stormwater runoff exiting the site. Mr. Mileto recommended putting in a seepage pit, giving details. Mr. Lemanowicz gave a recommendation.

Mr. Martin questioned the coverage and zoning table. They are going from 26%, not 29% to 31% building coverage. It is a significant difference and inquired what could be done to reduce it. Mr. Mileto stated the only way is to demolish a portion of the addition, but that would be an impracticable punishment to the applicant. He put it up with good intentions. Mr. Martin stated we are not going to punish anyone, but if you construct something without a permit, you can't say it is existing. Mr. Mileto said it does not create a negative impact. A majority of the buildings in the neighborhood cover even up to 80% and Third is a commercial area. Mr. Martin commented it is a huge increase on a two family house, where the lot is already undersized for the zone. Mr. Lydon agreed.

The matter was opened to the public, but there were no questions. Mr. Frasco commented there were many different things done to the property. Mr. Martin commented the permit issue is not an influencing factor. He is just looking at the numbers. Mr. Frasco said he would look to grass and seepage pits. Mr. Oakes noted there is a large piece of concrete in the

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rear that could be shaved off. Mr. Arroyo said they are asking for a tremendous amount of coverage. Mr. Hartman agreed. Mr. Bicocchi commented the applicant is pushing the envelope and needs to take it back to the drawing board. Mr. Bieri agreed. Mr. Owens felt pavement could be reduced and could reduce the sun room. Mr. Martin called for a motion.

Mr. Petrino asked if they could come back, and they are looking to remedy it. They did not have a problem converting the gravel to grass. It has been a money pit, and if they are going to reduce the building, they will just have to pull it down. Changing the gravel to grass will be no problem. Seepage pit would cost thousands of dollars. If he could get some type of verification about the gravel, he would bring it right in. The garage was falling apart. Mr. Martin said he repaired it bigger than it was before. Mr. Petrino commented they would like the Board to consider this and requested an adjournment. Mr. Mileto stated they could amend their application to include changing the gravel to dirt and a seepage pit. His plan would be amended to reflect same. Mr. Lemanowicz discussed the calculations for the seepage pit. Mr. Hartman commented there were other ways to reduce impervious coverage. Mr. Martin was concerned about the excessive building coverage.

A motion to **deny** was made by Mr. Frasco, who stated they mitigated to the extent they could for building coverage, with second by Mr. Hartman. On roll call vote, Mr. Frasco, Mr. Hartman, Mr. Oakes, and Mr. Martin voted yes to deny, and Mr. Koch, Mr. Arroyo and Mr. Bicocchi voted no. The motion was denied. Mr. Petrino asked for a denial without prejudice. Mr. Martin noted that was done the first time, and if they brought a new application in, it would have to be substantially different to not be deemed res judicata.

**4. Pompilio's Pizza, Inc., 221-223 Westwood Ave. - Variance for Expansion** - Issue of Notice - Mr. Nemcik represented the applicant and came forward. Mr. Lamb, objector's attorney, came forward and stated applicant's notice should state he is seeking a 43 parking space variance. Mr. Nemcik stated he provided notice three times. Mr. Rutherford advised as to the Board's position on the notice, which is very important and has dire consequences, and he is satisfied that even with the absence of the 43 parking spaces, it adequately serves as notice and adequately describes the property and

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application sought. There is a paragraph that this use is apparently non-conforming, and if the applicant seeks a certification for same pursuant to Sec 68, it also mentions a D1 expansion and D1 use. It also contains the catch-all phrase and mentions a meeting on this date at 8pm. He does not want the matter to be set aside nor does the applicant, but he is satisfied that proper notice was given.

Mr. Martin acknowledged that Mr. Rutherford advised the notice is in order and called for a motion to follow the attorney's advice. A motion was so made by Mr. Arroyo, seconded by Mr. Frasco and carried unanimously.

Mr. Martin addressed Mr. Nemcik's request for a special meeting. Both 1/18/10 and 1/25/10 were considered. The Objector was not available on the 18<sup>th</sup>, and it was a holiday. Mr. Nemcik asked if they could have preference for 1/11/10. Mr. Rutherford suggested carrying to 1/11/10, and he could confer with counsel as to a date. Mr. Martin would then discuss same with Board Members. Lastly, Mr. Lamb stated there is no application for Section 68, and he can only see a Planning Board application. There is no variance application. Mr. Nemcik stated he did have an application and noted they were first inadvertently sent to the Planning Board. Mr. Martin stated the application should be in the file, and Mr. Nemcik would forward it.

The matter was carried to 1/11/10, with discussion as to a special meeting date for later that month or the following month.

**5. New St. Mark AME Zion Church, 100 Palisade Avenue - Minor site Plan application** - Carried to 1/11/10 at the request of the applicant with no further notice;

**6. Yuan, 62 Lester Avenue, Application for Certification of Non-conforming Use** - Applicants were sworn in and testified they purchased the property in 2001. It was his understanding when they purchased it that it was a two-family home. The utilities are separate, and one boiler. It has been two-family since 1940. Mr. Martin reviewed the tax records and did not see an indication of two-family. There were discrepancies. Applicants stated they have a C/O from 2001. Mr. Owens noted the 1964 re-evaluation was wrong, since it showed two apartments, but said one-family. Also, it stated R2. Mr. Martin

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stated the Borough used to be divided and this property was R2, but is now R1. Applicants stated they made no alternations. There is a second entrance. Further they paid the fees associated with the C/O.

The matter opened to the public. Two people came forwards: A woman from 61 Lester Avenue and a man from 55 Westwood Avenue. The gentleman expressed concern that it may be expanded. Chairman Martin responded it would have to return to the Board. The woman stated it is an inconvenience and eyesore when the tenants move in and out every three months. Trucks are coming in the middle of the night. The house is overcrowded. You cannot sleep with windows open in summer. It is overcrowded now. Mr. Martin stated it is an enforcement issue, and they would have to speak with a property maintenance task force.

There were no questions from the public. Mr. Frasco commented there is evidence it was used as a two-family. A motion for approval was made by Mr. Koch and seconded by Mr. Frasco. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr. Oakes, Mr. Owens, and Mr. Martin voted yes.

**7. Puentes, 60 Wheeler Avenue - Variance application -**  
Mr. Rutherford found the publication documents to be in order. He noted the Section 68 application was previously approved, and the additions resulted in a D2 variance. Donald Rubin, NJ Architect, was sworn in and noted they proposed an addition to the house, which is very small. There is no room in the bedroom for anything but a queen-size bed. They provided a zoning table. The coverages are way below what is allowed. There is a second floor, and Mr. Puentes is a long-term resident. The upstairs apartment is used by Mr. Puentes. The photo board was marked A1. They are conforming with the setbacks. Mr. Martin noted he sees there is a full basement with a shower, separate entrance and lots of parking, and he was concerned about the possibility of a third apartment. He asked if they would take out the shower. Mr. Puentes stated the work was all done with permits. Mr. Puentes uses the room, and he did the work with permits. There is no kitchen down there. He just renovated the bathroom and spent a lot of money. Mr. Rutherford said they could record the Resolution so a successor would be aware. The architect stated they are just trying to do a moderate addition, and they are keeping with the character of the neighborhood.



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Mr. Bieri asked Mr. Lydon to explain the parking credits through RSIS. Mr. Rubin stated they are also planning to do landscaping. Mr. Lemanowicz reviewed his report dated 12/7/09, reciting items to be added to the plan. Mr. Lydon reviewed his report, noting points of reference.

There were no further questions from the Board. The matter was opened to the public. Damon Incenti, 4 Wheeler Avenue was sworn in and expressed concern that the property be used as a three-family, as he observed it was done in the past. He previously had to move his trees due to the installation of a fence. The fence was shown to be on Mr. Puentes' property, but actually 3' of Mr. Incenti's property is included. Mr. Rubin noted that Mr. Puentes would like to plant a tree for him to make it up to him, since he cut the tree thinking it was his. Mr. Rubin stated they are planning to plant a couple of trees. Mr. Incenti's inquiry is that there are three dwelling units. Pat Mallory, 31 Fourth Avenue, asked if he paid for the tree when it fell, but the response was one of the tenants was in the business.

A motion to approve by Mr. Koch and second by Mr. Arroyo, who complimented the architect, with the conditions that there shall be no kitchen in the basement, removal of garage, amendments to plan per comments of engineer. No separate spaces between first floor and basement. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr. Oakes, Mr. Owens, and Mr. Martin voted yes.

**8. Keynton, 27 Hillside Avenue - Variance application -** deemed incomplete per 10/22/09 letter of Steve Lydon; Mr. Lydon to follow up with applicant; matter carried to 1/11/10;

**10. DISCUSSION:** None

**11. ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 11:30 p.m.

**Respectfully submitted,**

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**MARY R. VERDUCCI, Paralegal**  
**Zoning Board Secretary**